In an otherwise careful and excellent summing-up it appears to us that the learned trial Judge used certain phrases adverse to the Appellant which are not borne out by the evidence, and which cannot be supported by medical jurisprudence. For instance, the learned trial Judge directed the Assessors in this case that if they accepted the medical evidence, the fractures of the ribs were such as themselves to endanger life, because the evidence was that they almost certainly punctured the vital parts internally. We can find no evidence on the record to support that statement. Further, the learned Judge directed the Assessors that they might find that the appellant intended to cause the death of the deceased if, to quote that particular passage from the summing-up, "you find simply an intention to cause such bodily injury, such as breaking the ribs for example, as would in the ordinary course of nature cause death". As we have stated, a broken rib, in itself, is not sufficient to cause death, and since in this case there was no post-mortem examination and no medical evidence as to the specific cause of death, we consider that these particular directions may have influenced the Assessors adversely against the Appellant.

After careful consideration we find ourselves in the position that we are unable to say that the Assessors would have inevitably arrived at the same verdict if they had not been directed as stated, and therefore we feel it would be unsafe to uphold the conviction for murder. The evidence clearly supports a conviction for the offence of causing grevious hurt for the purpose of extorting a confession, and accordingly we quash the conviction for murder, and substitute a conviction for an offence against section 331 of the Penal Code. As regards sentence, we consider this is a case in which we should inflict the maximum punishment under that section and accordingly we sentence the Appellant to ten years rigorous imprisonment to date from the date of his conviction i.e. the 5th day of December, 1946.

Order Accordingly.

TANG MEOW SAM v. PUBLIC PROSECUTOR

[App. Crim. Juris. (Willan, C.J.) October 31, 1947]

Common Gaming Houses Enactment (Cap. 47), Section 4 (i) (b) — Owner charged with permitting another person to use room as Common Gaming House — Presumption on finding of instruments of gaming.

In this case the facts were shortly as follows:—The appellant was the principal tenant of house No. 111 Batu Road, Kuala Lumpur, and sublet a room, on the first floor, to another person. The Police raided the room on a Search Warrant and found appliances for gaming in the room. When the police arrived at the premises the main door by which entry could be effected to the first floor thereof was locked and it was the appellant who opened it on the police demanding entry. The appellant was convicted on a charge that he being the owner of the room permitted another person to use it as a common gaming house. He appealed against his conviction.

Held, (1) that the presumption arising from the finding of instruments of gaming and other circumstances affects the place in question itself and is therefore effective against any person interested in it whether in occupation or not; (2) that the principal tenant of a house, having let one room which becomes a common gaming house, can be convicted of having permitted the use of the room as a common gaming house, if he is shown to have known of the user and not taken steps to prevent it by determining the tenancy or otherwise; and (3) that knowledge of such user could be inferred in this case from the circumstances including the fact that the front door of the house was locked, that the key was in the control of the principal tenant and that the occupants of the first floor in the house, including the appellant, were living very close together.

CRIMINAL APPEAL.

F. G. Charlesworth for the Appellant.

Shield (Crown Counsel) for the Respondent.

Willan, C. J. : — In this case the appellant was originally charged under section 4 (i) (b) of the Common Gaming Houses Enactment (Cap. 47) in that being the *occupier* of a room in premises No. 111 Batu Road, Kuala Lumpur, he permitted another person to use such room as a common gaming house, on the 17th day of July, 1947.

During the trial the charge was amended to one under the same section, that the appellant, being the *owner* of the room in question, permitted another person to use such room as a common gaming house.

The following facts were proved at the trial :—

(a) That the appellant has rented, and still continues to rent, house No. 111 Batu Road, Kuala Lumpur, as the principal tenant, and has done so from the year 1945.

(b) That the appellant, himself, originally occupied the room in question, which is on the first floor of that house, but on the 15th day of May, 1947, he sub-let that room to the other person and continued to live on the first floor near to that room. These facts of sub-letting and continuation of residence are taken from the evidence of the appellant himself.

(c) That on the day in question, when the police raided the premises, appliances for gaming were found in the room in question.

(d) That on the police arriving at the premises the main door by which entry could be effected to the first floor thereof was locked, and that it was the appellant who opened it on the police demanding entry.

By section 2 of the Enactment "place" includes a room, and a place is deemed to be "used" for a purpose if it is used for that purpose even on one occasion only.

When gaming appliances are found in any place lawfully entered by the police — there is no dispute that this place was lawfully entered by the police who were armed with a proper search warrant — two presumptions arise under section 19 of the Enactment, one against the occupier of that place and the other against the place itself. Since the appellant was not the occupier of the place — in this case a room — no presumption can arise against him, but the presumption provided by that section against the place (room) still stands, and it is that until the contrary be proved the place (room) is a common gaming house.

Mr. Charlesworth, for the appellant, first submitted that since the appellant had sub-let the room in question to another person, that other person was in exclusive possession of that room and the appellant was out of possession, and that no charge of permitting the room to be so used could be brought against the appellant unless it could be proved that he was in occupation of that room. Subsequently, Mr. Charlesworth, during the course of argument, modified that submission and admitted that an owner could be successfully prosecuted if he knew his premises were being used as a common gaming house, and having the opportunity of preventing them from being so used, he did nothing about it. He further submitted on this that the only step such an owner could take would be to determine the tenancy.

That an owner can be prosecuted for permitting his premises to be used as a common gaming house, even if he is not in occupation himself of any part of those premises, is clear from the following passage in *Braddell's* Commentary on the Common Gaming Houses Ordinance, 2nd edition, page 74 :—

> It must next be proved that the accused used or kept the premises as a common gaming house. If the accused has been strictly proved to the 'occupier' and instruments of gaming or any of the other circumstances have been found, as is pointed out above, the accused will be presumed to have used the premises as a common gaming house. **If the accused is the owner, not in occupation....the only presumption that will arise is that the place was a common gaming house.**

Therefore, in this case that presumption arises against the appellant even though he was not in occupation of the room in question.

Hence the question in this case resolves itself into one of fact whether from the evidence the appellant had knowledge that the room was being used as a common gaming house and permitted it to be so used.

The appellant, himself, gave evidence that he had no knowledge that it was so being used. The learned District Judge disbelieved that evidence. In my view the learned District Judge was right. From a plan of the premises, which appears on the record, it is plain that the first floor of this particular house is not large and that the occupants thereof are living very close together. The other person, i.e. the appellant's immediate tenant of the room in question, gave evidence that he is a gambling addict of Chee Fah lotteries.

This other person admitted that he rented that room from the appellant and, as already stated, the appellant admitted having rented that room to that other person. From this evidence and from the lay out of the first floor itself I do not see how the learned District Judge could have come to any other conclusion than that the appellant knew the room was being used as a common gaming house and permitted it to be so used.

Accordingly this appeal is dismissed. The sentence of a fine of $1,500, in default six months rigorous imprisonment, is maintained. If the fine is not paid the imprisonment will commence from to-day because the appellant has been on bail since the day he was convicted.

Appeal Dismissed.

HAMIRON BIN MAT UDIN AND 2 OTHERS v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Murray-Aynsley, C.J., Singapore, Pretheroe Ag. C.J., Malayan Union and Spenser-Wilkinson, J.) November 15, 1947]

Evidence Enactment S. 27 — Facts discovered as result of information given by accused.

In this case in a trial for murder evidence was given of statements made by the accused to police officers. It was submitted that such evidence was admissible under S. 27 of the Evidence Enactment.

Held, that Section 27 of the Evidence Enactment must be used with the greatest care and evidence of the fact discovered and of its relevancy must be given before any evidence can be offered as to the information from the accused which resulted in the discovery.

Cases referred to :—

(1) *Sukhan v. The Crown* (1929) 10 I.L.R. Lahore 283.

(2) *Ganu Chandra v. Emperor* (1932) 56 I.L.R. Bom. 172.

(3) *Pulukuri Kotayya v. King Emperor* 74 I.A. 65.

CRIMINAL APPEAL.

M. S. Mahendran for the Appellants.

M. G. Neal (Crown Counsel) for the Respondent.